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17 UNITED STATES DISTRICT COURT
18
19 NORTHERN DISTRICT OF CALIFORNIA
20
21 OAKLAND DIVISION

19	In re RIPPLE LABS INC. LITIGATION)	Case No. 4:18-cv-06753-PJH
20)	<u>CLASS ACTION</u>
21	This Document Relates To:)	
22	ALL ACTIONS.)	REPLY MEMORANDUM IN FURTHER
23)	SUPPORT OF PLAINTIFFS' MOTION TO
24)	REMAND
25)	DATE: February 13, 2019
26)	TIME: 9:00 a.m.
27)	CTRM: 3, 3rd Floor
28)	JUDGE: Hon. Phyllis J. Hamilton

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND STATEMENT OF THE ISSUES

Defendants have opposed remand based on unsupported arguments that only further demonstrate that this action should be remanded to state court.¹ First, Defendants disregard the unambiguous language of the First Consolidation Order which specifically provides that "the Consolidated Complaint shall be the operative complaint and *shall supersede all complaints filed in any of the actions consolidated herein.*"² ECF No. 2-1, Ex. E, ¶8. Pursuant to this clear instruction, the complaint to be analyzed when considering remand must be the Operative State Law Complaint,³ which Defendants have both expressly and implicitly admitted is not removable. Any subsequent complaints consolidated after filing or after remand—such as the *Greenwald* complaint—are superseded and cannot form the basis for removal. As such, Defendants' argument that Judge Richard DuBois' October 31, 2018 Second Consolidation Order effectively "merged" the separate complaints filed in *Greenwald* and *In re Ripple Labs* is unavailing. ECF No. 2-1, Ex. F.

Equally unpersuasive are Defendants' efforts to explain the validity of the Second Consolidation Order. Defendants rely on inapposite authority and make several mischaracterizations of the state court record to defend the Second Consolidation Order. That order was entered, however, even though no party moved or otherwise stipulated to the consolidation of *Greenwald*, which alleges claims arising under the federal securities laws on behalf of a world-wide class of purchasers, with *In re Ripple Labs*, which alleges only state law claims arising under California law on behalf of a California-only class. *See, e.g.*, Motion at 4. And neither the language of the Second Consolidation Order nor the state court record support Defendants' assertion that the *In re Ripple*

¹ "Opposition" or "Opp." refers to Defendants' Omnibus Memorandum of Points and Authorities in Opposition to Plaintiff Avner Greenwald's and Vladi Zakinov's and David Oconer's Motions to Remand filed on December 28, 2018 (ECF No. 21).

² Unless otherwise defined, all capitalized terms herein shall have the same meaning as set forth in Plaintiffs Zakinov and Oconer's Notice of Motion and Motion to Remand; Memorandum of Points and Authorities in Support Thereof ("Motion") filed on December 7, 2018 (ECF No. 18).

³ The Operative State Law Complaint refers to the Consolidated Complaint for Violations of California Law filed on October 15, 2018 in *In re Ripple Labs*, which asserts only California state law claims on behalf of a California-only Class. ECF No. 2-1, Ex. A.

1 *Labs* and *Greenwald* actions were consolidated for all purposes. *Compare, e.g.*, ECF No. 2-1, Ex. F
2 *with* Opp. at 11-16.

3 Defendants' additional claim that a reading of the allegations in the separate *Greenwald* and
4 *In re Ripple Labs* complaints obviates the need to comply with the "voluntary-involuntary" rule also
5 fails. (Opp. at 23). Indeed, it is settled that "the 'voluntary-involuntary' rule followed by the Ninth
6 Circuit requires that a suit remain in state court unless a 'voluntary' act of the plaintiff, such as the
7 voluntary amendment of the pleadings, brings about a change that renders the case removable." *See,*
8 *e.g., Goodman v. Wells Fargo Bank, N.A.*, No. cv 14-3171-JFN (RZx), 2014 U.S. Dist. LEXIS
9 195970, at *5 (C.D. Cal. July 1, 2014); *also* Motion at 8-10.

10 At the end of the day, Defendants are asking this Court to believe that two actions that they
11 acknowledge individually are not removable became removable due to an ambiguous and
12 inadvertent consolidation order. Their arguments must fail. For the reasons set forth herein, as well
13 as those outlined in the Motion, the Actions should be remanded. *Smith v. Abbott Labs., Inc.*, No.
14 CV 16-501 (RJL), 2017 WL 3670194, at *1 (D.D.C. Mar. 31, 2017) ("remand is necessary whenever
15 there is an ambiguity or doubt about the existence of federal jurisdiction;" *Wyatt v. Lehman Bros.*
16 *Bank, FSB*, No. CV1409824PSGPLAX, 2015 WL 4397938, at *2 (C.D. Cal. July 16, 2015) ("If
17 there is any ambiguity as to the propriety of removal, federal jurisdiction must be rejected.").

18 **II. REMOVAL WAS IMPROPER AND THE COURT SHOULD GRANT REMAND**

19 **A. The Second Consolidation Order Did Not Render the Actions Removable**

20 Defendants' removal is based entirely on the incorrect premise that the Second Consolidation
21 Order "merged" the *Greenwald* and *In re Ripple Labs* complaints. Opp. at 16-19. This argument
22 completely disregards the purpose and effect of Judge DuBois' First Consolidation Order which,
23 provides:

24 Plaintiffs shall either designate a complaint as operative or file a Consolidated
25 Complaint ("Consolidated Complaint") within 45 days after entry of this order,
26 unless otherwise agreed upon by the parties. If filed, *the Consolidated Complaint*
27 *shall be the operative complaint and shall supersede all complaints filed in any of*
28 *the actions consolidated herein.*

ECF No. 2-1, Ex. E, ¶8.

1 Consistent with the First Consolidation Order, Plaintiffs filed the Operative State Law
2 Complaint October 15, 2018 asserting only California state law claims on behalf of a California-only
3 Class. ECF No. 2-1, Ex. A. Since its filing, the Operative State Law Complaint has been at all
4 times, and remains the only operative complaint in this action. Accordingly, even if *Greenwald* and
5 *In re Ripple Labs* had been merged, pursuant to the First Consolidation Order the Operative State
6 Law Complaint superseded the *Greenwald* complaint upon entry of the Second Consolidation Order.
7 See ECF No. 2-1, Ex. E, ¶8; see also Motion at 11-12. Because the federal claims asserted in
8 *Greenwald* are not present in the Operative State Law Complaint, and only the non-removable state
9 law claims remain, removal was improper and remand is required.

10 Not surprisingly, Defendants attempt to downplay the significance of the First Consolidation
11 Order and argue that it "does not state that the Consolidated Complaint would supersede the
12 complaints in related actions that would be consolidated *in the future*" (Opp. at 19). This
13 construction makes no sense, however, and the First Consolidation Order's mandate that the
14 "operative complaint ... shall supersede all complaints" (ECF No. 2-1, Ex. E, ¶8) would serve no
15 purpose if it were not intended to apply to *all* related cases subsequently consolidated into *In re*
16 *Ripple Labs*, including those filed or remanded in the future.

17 Defendants also argue that the Operative State Law Complaint did not supersede the
18 *Greenwald* complaint because the Second Consolidation Order "does not reference the Consolidated
19 Complaint" or make any reference to "the *Greenwald* Complaint" (Opp. at 19). Although
20 Defendants are correct that the Second Consolidation Order does not specifically address this point,
21 Defendants fail to explain how this silence does anything other than underscore the ambiguity of the
22 Second Consolidation Order. Indeed, the only plausible reading is that paragraph 8 of the First
23 Consolidation Order controls after consolidation. ECF No. 2-1, Ex. E, ¶8 ("the Consolidated
24 Complaint shall be the operative complaint and shall supersede all complaints filed in any of the
25 actions consolidated herein.").

B. Defendants' Suggestion That the Court May Ignore the Propriety of the Underlying Consolidation Is Misplaced

Defendants implore the Court "[n]ot [t]o [c]onsider [t]he [p]ropriety [o]f [t]he [u]nderlying [c]onsolidation" even though the Second Consolidation Order provides the entire basis for Defendants' claimed removal jurisdiction. Opp. at 9. Yet, Defendants concede that neither *Greenwald* nor *In re Ripple Labs* is independently removable and that this Court's jurisdiction under CAFA is entirely predicated on Defendants' interpretation of both the validity and effect of the Second Consolidation Order. *Id.* at 6; 16-19.

To dissuade this Court from considering the propriety of the Second Consolidation Order, Defendants rely entirely on an out-of-Circuit unpublished decision from the U.S. District Court for the District New Jersey. See Opp. at 9 (citing *Unifoil Corp. v. Se. Pers. Leasing, Inc.*, No. CV 18-18, 2018 WL 4676044, at *2 (D.N.J. Sept. 28, 2018)). Defendants' reliance on *Unifoil*, however, is misplaced given that the *Unifoil* court *did* address the propriety of the state court consolidation at issue in that case and, ultimately, remanded the case to state court after citing ambiguities in the order that could affect federal jurisdiction. See *Unifoil*, 2018 WL 4676044, at *2 ("even if it is ambiguous whether the Consolidation Order intended to consolidate the Coverage Action and the Underlying Action for discovery purposes or for all purposes, *that ambiguity must be resolved in favor of remand*"). Defendants' other authorities are in accord. See *In re Methyl Tertiary Butyl Ether ("MTBE") Prod. Liab. Litig.*, 399 F. Supp. 2d 340, 355 (S.D.N.Y. 2005) (analyzing state court's consolidation order); *City of Oakland v. Abend*, No. C 07 2142 EMC, 2007 WL 2023506, at *4 (N.D. Cal. July 12, 2007) (same). This Court should decline Defendants' invitation to simply ignore the Second Consolidation Order's procedural and factual defects because it provides the sole basis for Defendants' removal petition.

C. Defendants' Other Attempts to Support the Propriety of the Second Consolidation Order Also Must Fail

Defendants advance numerous other arguments aimed at defending the validity and merits of the Second Consolidation Order. None are persuasive. First, Defendants claim that the Second Consolidation Order validly and properly consolidated *Greenwald* and *In re Ripple Labs* even

though no party ever stipulated that the actions should be consolidated, nor did any party file a notice and motion to consolidate the actions, as required by both Rule 3.350 of the California Rules of Court ("Rule 3.350") and paragraph 15 of the First Consolidation Order. *See, e.g., Sutter Health Uninsured Pricing Cases*, 171 Cal. App. 4th 495, 514 (2009) ("Absent a stipulation to consolidate, a noticed and written motion to consolidate is required."); ECF No. 2-1, Ex. E, First Consolidation Order, ¶15 (requiring that in the event any case "which properly belongs as part of the *In re Ripple Labs Inc. Litigation*, Lead Case No. 18-CIV-02845, is hereafter or has been filed in, remanded to, or transferred to this Court, counsel for the parties shall call such filing ... to the attention of the clerk of this Court **for purposes of moving this Court for an order consolidating such case(s) with *In re Ripple Labs Inc. Litigation***, Lead Case No. 18-CIV- 02845.").

In an effort to sidestep the requirements of Rule 3.350 and the clear command of the Court's First Consolidation Order, Defendants cite several cases they claim establish a state court's right to consolidate actions *sua sponte*. Opp. at 9-10; 15. However, not a single case cited by Defendants considered *sua sponte* consolidation in a factual or procedural context even remotely similar to that presented here. Indeed, the first two cases cited by Defendants involved the Court of Appeals ordering consolidation *sua sponte* where judgements and awards of attorneys' fees were appealed separately. *California State Univ., Fresno Assn., Inc. v. Cty. of Fresno*, 9 Cal. App. 5th 250, 255 (2017) (ordering consolidation *sua sponte* of appeal from judgement and appeal of post judgement order denying motion for attorneys' fees); *Heritage Pac. Fin., LLC v. Monroy*, 215 Cal. App. 4th 972, 980 (2013) (ordering consolidation *sua sponte* of appeal from adverse judgment and appeal of award of attorneys' fees filed by same defendant). And, the remaining cases Defendants cite involve case management orders, and non-analogous to facts. Opp. at 9-10.⁴

⁴ *See Savadians v. Toledo, et al.*, Case No. HG09447714, Case Management Order (Alameda Super. Ct. Dec. 9, 2009) (one-page case management order) (attached as Ex. A, to the Declaration of Stephen J. Oddo in Support of Reply Memorandum in Further Support of Plaintiffs' Motion to Remand ("Oddo Decl.")); *Bryant v. Matson Navigation Co., et al.*, Case No. RG07361995, Case Management Order (Alameda Super. Ct. Nov. 6, 2008) (same) (Oddo Decl., Ex. B); *Taylor v. Belen*, Case No. HG06261686, Order Overruling Defendant's Demurrer and Consolidating Action (Alameda Super. Ct. June 15, 2006) (case management order in quiet title action) (Oddo Decl., Ex. C); *Johnson v. Vowell, et al.*, Case No. CGC-03-421113, Order Denying Motion to Dismiss (San Francisco Super. Ct. Nov. 24, 2003) (case management order directing consolidation *sua sponte* after inadvertent dismissal of initially filed case) ("This action was filed after the Court entered an order in

1 Similarly unavailing is Defendants' reliance on Rule 3.767(a)(4) of the California Rules of
 2 Court ("Rule 3.767(a)(4)"), which Defendants claim "expressly authorize[s]" state courts to
 3 "facilitate the management of class actions through consolidation" *See* Opp. at 10. Defendants do
 4 not (and cannot) point to any language in the Second Consolidation Order that indicates or otherwise
 5 suggests that the order was entered by Judge DuBois pursuant to or in furtherance of this general
 6 statutory provision.⁵ Furthermore, Defendants fail to cite even a single case where Rule 3.767(a)(4)
 7 was utilized, much less utilized to consolidate *sua sponte* two or more class actions asserting
 8 different claims against different defendants on behalf of different putative classes.

9 Further, Defendants claim that their filing of a two-page "check-the-box" notice of related
 10 case (Oddo Decl., Ex. E) is the equivalent of a properly noticed motion to consolidate as required by
 11 Rule 3.350 and paragraph 15 of the First Consolidation Order is unsupported. Opp. at 11. As
 12 highlighted in Plaintiffs' Motion, the parties never were afforded the opportunity to (i) brief the issue
 13 of consolidation prior to entry of the Second Consolidation Order (which came less than a week after
 14 Defendants filed the notice of related case); or (ii) address with Judge DuBois whether the Second
 15 Consolidation Order was entered inadvertently. Motion at 5; 8-10. The Court should therefore
 16 reject Defendants' unsupported claim that their related case notice "serve[d]" as a motion to
 17 consolidate" (Opp. at 11), and their supposition that "Judge DuBois decided the formality of a
 18 motion was unnecessary."⁶ *Id.* Neither the language of the Second Consolidation Order nor the
 19 state court record provides *any* basis for these assertions. To the contrary, the record in the state

21 Case Number 421113 ... that inadvertently dismissed the case with prejudice.... Accordingly, case
 22 number 421113 is not and should not have been dismissed and thus there was never a need to file
 case number 423566.) (*See* Oddo Decl., Ex. D.).

23 ⁵ Defendants' Opposition also improperly paraphrases Rule 3.767(a)(4). Opp. at 10. In addition to
 24 consolidation, Rule 3.767(a)(4) also expressly authorizes state courts to manage class actions
 25 through other means, including severance, coordination, and bifurcation. *See* Rule 3.767(a)(4)
 26 (authorizing courts to "[f]acilitate the management of class actions through consolidation, **severance,**
coordination, bifurcation, intervention, or joinder"). For this reason, Defendants are incorrect that
 "coordination is not available" here (Opp. at 3 n.2), as Rule 3767(a)(4) clearly vests in state courts
 the authority to facilitate class actions through coordination.

27 ⁶ Moreover, Defendants' claim that the notice of related case "serve[d]" as a motion to consolidate"
 28 (Opp. at 11) runs contrary to their position that they took "no action" to trigger removal that would
 violate the "voluntary-involuntary rule" *See infra* Section III.

1 court action, including the unambiguous language of the First Consolidation Order, demonstrates
 2 that in the absence of a consolidation stipulation, the parties were required to file a notice and motion
 3 in order to consolidate *Greenwald* with *In re Ripple Labs*. See Motion at 5; 8-10.

4 Finally, Defendants' efforts to defend the "merits" of the Second Consolidation Order fare no
 5 better. Throughout their Opposition, Defendants attempt to "illustrat[e] the propriety" of the Second
 6 Consolidation Order by ignoring the significant differences between *Greenwald* and the *In re Ripple*
 7 *Labs*. Opp. at 7; 11-14. Although Defendants claim that "courts regularly consolidate" class actions
 8 "even where there are some differences" between the classes, claims, and defendants (Opp. at 13),
 9 none of the authority they rely on supports the premise that one or more class actions asserting
 10 differing federal and state law claims against different defendants on behalf of different putative
 11 classes are properly consolidated under state law.

12 For instance, *Miller v. Ventro Corp.* (Opp. at 13), addressed consolidation under Rule 42(a)
 13 of the Federal Rules of Civil Procedure ("FRCP 42(a)"), not state law. No. 01-CV-1287, 2001 WL
 14 34497752, at *2 (N.D. Cal. Nov. 28, 2001). Moreover, *Miller* involved a class of bondholders that
 15 resisted consolidation with a class of shareholders even though both actions asserted fraud claims
 16 under sections 10(b) and 20(a) of the Securities Act of 1934 (and were therefore both subject to the
 17 additional pleading and procedural requirements of the Private Securities Litigation Reform Act
 18 ("PSLRA")). *Id.* at *4 (noting that "both the stockholder and bondholder actions make claims under
 19 sections 10(b) and 20(a) of the Securities Act of 1934 and Rule 10b-5 thereunder"). In ordering
 20 consolidation, Judge Armstrong determined that "there [existed] no significant prejudice to the
 21 bondholder class" because all plaintiffs would still have to face the same exacting "standard even if
 22 the actions were not consolidated." *Miller*, 2001 WL 34497752, *5.⁷

23 Here, however, the putative class in *In re Ripple Labs*—unlike the class of bondholders in
 24 *Miller*—would be significantly prejudiced by consolidation with *Greenwald*. As set forth in

25 ⁷ Defendants' reliance on *Aronson v. McKesson HBOC, Inc.*, 79 F. Supp. 2d 1146, 1150 (N.D. Cal.
 26 1999) is also misplaced. Opp. at 13. In *Aronson*, the court addressed consolidation in the context of
 27 FRCP 42(a) and found that plaintiff's "objection to consolidating his common-law derivative suit"
 28 with class actions asserting federal claims "deserve[d] to be addressed separately." 79 F. Supp. 2d
 at 1151 (finding that the issue of whether to consolidate state law claims "should be fully briefed by
 the parties before the court rules on consolidation"). *Id.* at 1152.

1 Plaintiffs' Motion, the Operative State Law Complaint does not allege claims arising under federal
 2 securities laws and therefore is not governed by the PSLRA. *See* Motion at 16-17. If compelled to
 3 proceed in this Court alongside *Greenwald*, the putative class in *In re Ripple Labs* will be subject to
 4 the heightened requirements of the PSLRA, which govern each stage of *Greenwald*.⁸ *Id.*
 5 Accordingly, the Court should follow the reasoning of *Miller*, as well as the other cases cited in
 6 Plaintiffs' Motion where courts have repeatedly declined to consolidate these different types of
 7 actions.⁹

8 **D. The Second Consolidation Order Could Not Have Completely Consolidated**
 9 ***Greenwald* and *In re Ripple Labs* for All Purposes**

10 In addition to defending its propriety, Defendants also contend that the Second Consolidation
 11 Order consolidated *Greenwald* and *In re Ripple Labs* for all purposes.¹⁰ *Opp.* at 15-19. In their
 12 Opposition, however, they fail to identify any language from the Second Consolidation Order that
 13 would suggest that Judge DuBois intended to consolidate the actions for all purposes. Instead,
 14 Defendants' Opposition usurps the language of the First Consolidation Order which—unlike the

15 _____
 16 ⁸ *See, e.g.*, 15 U.S.C. §77z-1(a)(3) (mandating the filing of a certification with federal securities class
 17 action complaints); 15 U.S.C. §77z-1(a)(5) (providing certain mandatory disclosure of settlement
 18 terms to class members); 15 U.S.C. §77z-1(b)(3)(B) (requiring a stay of all discovery and other
 proceedings ... during the pendency of any motion to dismiss).

19 ⁹ *See* Motion at 16-15; *In re Bear Stearns Cos. Sec., Derivative, and ERISA Litig.*, 08 M.D.L. No.
 20 1963 (RWS), 2008 U.S. Dist. LEXIS 106327, at *18 (S.D.N.Y. Jan. 5, 2009) (denying defendants'
 21 request to consolidate separate federal securities, state law derivative and ERISA actions into one
 22 consolidated action after recognizing the "overwhelming number of courts ... who have determined
 23 that consolidation in this context is not appropriate"); *Rochester Laborers Pension Fund v. Monsanto*
 24 *Co.*, No. 4:10cv1380CDP, 2010 U.S. Dist. LEXIS 101869 (E.D. Mo. Sept. 28, 2010) (declining to
 25 consolidate federal securities fraud action with other related non-PSLRA actions); *In re Bank of Am.*
Corp. Sec., Derivative, & ERISA Litig., 258 F.R.D. 260 (S.D.N.Y. 2009) (consolidating securities,
 state law derivative and ERISA actions into three separate actions and appointing different lead
 plaintiffs and lead counsel in each of the separate actions); *In re Diebold Sec. Litig.*, No.
 5:05CV2873, 2006 WL 3023033, at *2-*4 (N.D. Ohio Oct. 23, 2006) (consolidating five securities
 cases into one action, five ERISA cases into a separate second action, and two state law derivative
 actions into a third separate action).

26 ¹⁰ Section 1048 of California Code of Civil Procedure authorizes two types of consolidation: "a
 27 consolidation for purposes of trial only, where the two actions remain otherwise separate; and a
 28 complete consolidation or consolidation for all purposes, where the two actions are merged into a
 single proceeding under one case number and result in only one verdict or set of findings and one
 judgment." *Hamilton v. Asbestos Corp., LTD.*, 22 Cal. 4th 1127, 1147 (2000).

1 Second Consolidation Order—expressly stated that *Zakinov* and *Oconer* were consolidated under *In*
 2 *re Ripple Labs* "for all purposes, including pre-trial and proceeding and the trial." See ECF No. 2-
 3 1, Ex. E & Opp. at 15-16. Although Defendants quote this language from the First Consolidation
 4 Order, they do not addresses, much less adequately explain, why the Second Consolidated Order
 5 omitted similar language, if as they claim, Judge DuBois intended to order a complete consolidation
 6 of *Greenwald* and *In re Ripple Labs*.¹¹

7 Moreover, the authority cited by Defendants also fails to demonstrate that the Second
 8 Consolidation Order consolidated the actions for all purposes. Opp. at 15. Defendants rely
 9 extensively on *Hamilton*, but in that case the same plaintiff moved to consolidate two related actions
 10 that he filed against several asbestos producers. The trial court in *Hamilton* expressly stated after
 11 full briefing that upon entry of its consolidation order, "the two cases were consolidated **for all**
 12 **purposes** and an early trial date was ordered" (emphasis in original). See *Hamilton*, 22 Cal. 4th at
 13 1149. The other authority Defendants rely on—*City of Oakland*—is similarly distinguishable. See
 14 2007 WL 2023506, at *4 ("Although the state court did not specify that only one judgment would be
 15 rendered, **it consolidated the two cases for all purposes** (the [plaintiffs] asked in essence for
 16 consolidation for all purposes by asking that discovery, pretrial motions, and trial be consolidated)").

17 Further, Defendants' claim that Judge DuBois could not have intended to limit consolidation
 18 for purposes of trial because of the purportedly "extensive overlap" between *Greenwald* and *In re*
 19 *Ripple Labs* (see Opp. at 15-16) is contradicted by *Hamilton*. In *Hamilton*, the court rejected the
 20 identical argument that the trial court must have intended to order a complete consolidation because
 21 the "actions 'involve[d] common questions of law and fact,'" and that "consolidation 'will avoid
 22 unnecessary costs and delay,'" and instead found that "these grounds will support a consolidation **of**
 23 **either type**." *Hamilton*, 22 Cal. 4th at 1148 n.12.

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 26 ¹¹ Defendants' assertions that "[n]othing [in the Second Consolidation Order] suggests an intent to
 27 limit the scope of the consolidation" (Opp. at 15) merely underscores that the language of the Second
 28 Consolidation Order is vague and fails to resolve whether Judge DuBois intended to consolidate
Greenwald and *In re Ripple Labs* at all, much less, whether he intended for any consolidation to be
 for all purposes under C.C.P. §1048.

Finally, Defendants rely on *Bridewell-Sledge v. Blue Cross of California*, 798 F.3d 923, 926 (9th Cir. 2015) to argue that "this Court should consider the *Greenwald* and *In re Ripple Labs* actions as 'a single consolidated class action ... in determining whether there is jurisdiction under CAFA." Opp. at 17-18. *Bridewell-Sledge*, however, is inapposite. In *Bridewell-Sledge*, *plaintiffs* filed a motion to consolidate two class actions that asserted overlapping state law causes of action against the same defendants on behalf of identical classes and were filed minutes apart by counsel who represented both sets of plaintiffs. 798 F.3d at 926. After "the state court granted [*plaintiffs*'] motion for consolidation and ordered that the *Crowder* action and *Bridewell-Sledge* action be 'consolidated this date for all purposes' [and] ... further ordered that *Crowder* would be designated the lead case, and that all future filings should be made in only that lead case," Defendants nevertheless filed "two separate notices of removal – one for *Bridewell-Sledge* complaint and one for the *Crowder* complaint." *Id.* On appeal, the Ninth Circuit determined that "under these circumstances" it was appropriate to treat the cases "as a single consolidated class action that was united originally, rather than as two separate class actions filed at different times." *Id.* at 930.

Here, however, no party ever filed a motion to consolidate *Greenwald* and *In re Ripple Labs*, and Judge DuBois' Second Consolidation Order did not state or otherwise indicate that the two actions were consolidated "for all purposes." See ECF No. 2-1, Ex. F. Moreover, *Greenwald* and *In re Ripple Labs*, unlike the two actions in *Bridewell-Sledge*, do not involve the same parties, do not rely on identical class definitions, and do not assert overlapping state law causes of action. See Motion at 4-5; 15-17. For these reasons, *Bridewell-Sledge* does not support Defendants' contention that the separate *Greenwald* and *In re Ripple Labs* complaints should be viewed as a single consolidated action.

III. REMOVAL WAS NOT THE RESULT OF A "VOLUNTARY ACT" OF PLAINTIFFS

The Ninth Circuit's "voluntary-involuntary" rule provides that "only a voluntary act of the plaintiff [can] bring about removal to federal court." *Self v. Gen. Motors Corp.*, 588 F.2d 655, 658 (9th Cir. 1978); *People of State of Cal. By & Through Lungren v. Keating*, 986 F.2d 346, 348 (9th Cir. 1993) ("Since a voluntary act by the plaintiff has not rendered the case removable, it must remain in state court"). Acknowledging the validity of this doctrine (*see* Opp. at 21), Defendants

1 nonetheless claim that removal here did not run afoul of the "voluntary-involuntary" rule.
2 Defendants' arguments are without merit.

3 First, Defendants assert that because removal is based on the "allegations in the well-pleaded
4 *Greenwald* and *Ripple Labs* complaints "it does not violate the "voluntary-involuntary" rule. Opp. at
5 23. This argument is a red-herring as it ignores that the only basis for comparing the allegations of
6 the *In re Ripple Labs* and *Greenwald* complaints together is the Second Consolidation Order which,
7 as explained throughout (*see supra* Section I. B-D; *see also* Motion at 8-10), was entered without
8 any party stipulating or moving to consolidate *Greenwald* with *In re Ripple Labs*. Moreover,
9 Defendants' contention also ignores that if valid, entry of the Second Consolidation Order caused the
10 Operative State Law Complaint to supersede the *Greenwald* complaint and nullify its federal claims.
11 *See supra* IA.; *see also* Motion at 11-12.

12 Second, Defendants' claim that no "action by defendants[]" forms the basis of jurisdiction"
13 (Opp. at 23) is contradicted by Defendants' assertion that *their* decision to file a notice of related case
14 satisfied the motion requirement of the First Consolidation Order and purportedly triggered Judge
15 DuBois to enter the Second Consolidation Order. Opp. at 11; 23-24.

16 Finally, Defendants are simply incorrect that the Second Consolidation Order is traceable to a
17 voluntary act by plaintiffs. Opp. at 23. Although Defendants assert that "Plaintiffs voluntarily
18 agreed to the Stipulation [that later would become the First Consolidation Order]" (*id.*), they ignore
19 that the *Greenwald* plaintiff and ten additional defendants named therein were not parties to that
20 Stipulation.¹² In any event, even if the additional *Greenwald* parties were parties to the Stipulation
21 (they were not), Defendants disregard that the Second Consolidation Order was entered *despite* the
22 clear language of the First Consolidation Order, which clearly required that the parties "mov[e] the
23 Court for an order consolidating" any cases with *In re Ripple Labs*. (ECF No. 2-1, Ex. E, ¶15).

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27 ¹² Perhaps not surprisingly Defendants fail to cite any authority suggesting that a decision by some
28 plaintiffs to agree to a stipulation to a consolidation is sufficient to both bind all parties to that
stipulation and satisfy the "voluntary-involuntary rule."

Because Defendants have not (and cannot) show that this action became removable as a result of a voluntary act by plaintiffs in *In re Ripple Labs* and *Greenwald* it must be remanded.¹³

IV. CAFA DEMANDS THAT IN RE RIPPLE LABS BE REMAND

A. Removal of *In re Ripple Labs* was Improper Under CAFA's Local Controversy Exception

Federal courts are required to decline jurisdiction under CAFA when actions removed from state court satisfy the requirements of the "local controversy exception" to the statute. *Benko v. Quality Loan Serv. Corp.*, 789 F.3d 1111, 1116 (9th Cir. 2015). This exception applies, where ever: "(1) greater than two-thirds of the members of the putative class are citizens of the state in which the action was filed; (2) at least one defendant is a defendant from whom members of the class seek significant relief, whose alleged conduct forms a significant basis of the asserted claims, and who is a citizen of the original filing state; (3) the principal injuries were incurred in the original filing state; (4) no other class action asserting similar factual allegations has been filed against any of the defendants during the previous three years." *Sanchez v. Aviva Life & Annuity Co.*, No. CV S-09-1454 FCD/DAD, 2009 WL 10694222, at *2 (E.D. Cal. July 16, 2009); 28 U.S.C. §1332(d)(4)(A)(i); 28 U.S.C. §1332(d)(4)(A)(ii).

CAFA's "local controversy" exception applies here because: (i) the named plaintiffs in the Operative State Law Complaint are California citizens and the Operative State Law Complaint asserts state law causes of action on behalf of a class consisting solely of California citizens; (ii) the Operative State Law Complaint seeks significant relief in the form of damages stemming from the wrongful conduct of defendants Ripple, XRP II, and Garlinghouse who have their principal places of business in California and/or are citizens of California; and (iii) the Operative State Law Complaint demonstrates that the principal injuries were incurred in California by citizens of California. Motion at 13-14.

¹³ For this reason, Defendants reliance on *Thompson v. Target Corp.* is misplaced. In *Thompson*, the court found that the class claims became removable as a result of plaintiff's voluntarily decision to seek damages on behalf of a larger class, thereby triggering "the \$5 million threshold for CAFA jurisdiction." No. EDC1600839JGBMRWX, 2016 WL 4119937, at *8 (C.D. Cal. Aug. 2, 2016).

Defendants do not contest that the "local controversy" exception applies to the Operative State Law Complaint in *In re Ripple Labs*. Rather, Defendants' sole contention is that the requirements of CAFA's "local controversy" exception are "not met" when "[l]ooking to *both* the *Ripple Labs* and *Greenwald* complaints." Opp. at 24. But, as described *supra* Section I.A., and as fully set forth in Plaintiffs' Motion, the Second Consolidation Order (even if found to be valid) did not operate to merge the *Greenwald* and *In re Ripple Labs* complaints. Rather, as stated in the First Consolidation Order, the Operative State Law Complaint would have superseded the *Greenwald* complaint upon consolidation. For these reasons, Defendants' attempt to avoid CAFA's "local controversy" by pointing to the separate *Greenwald* and *In re Ripple Labs* complaints fails. The Court should grant remand.

B. CAFA's Securities Exception Also Applies

Defendants' claim that CAFA's securities exception does not bar removal here because "Plaintiffs' claims arise from their ... purchases of XRP." Opp. at 25. Not true. The Operative State Law Complaint relates directly to the rights, duties, and obligations relating to the XRP securities offered and sold by Defendants, including the various representations made by Defendants to the putative Class regarding their rights as holders of XRP. *E.g.*, ECF No. 2-1, Ex. A, ¶¶43, 55, 95. Accordingly, 28 U.S.C. §1332(d)(9)(c) provides yet another basis for remand. *See* 28 U.S.C. §1332(d)(9)(c) (barring removal of any actions "that relates to the *rights, duties* (including fiduciary duties), and *obligation* relating to or created by or pursuant to any security.").

V. THE COURT SHOULD AWARD PLAINTIFFS ATTORNEYS' FEES AND COSTS

Despite being under no time exigency, Defendants jumped the gun to remove this action despite the suggestion of plaintiffs' counsel in *In re Ripple Labs* and *Greenwald* to contact the state court to clarify the intent and scope of the Second Consolidation Order. *See* Motion at 6; 18. Instead, they removed *In re Ripple Labs* and *Greenwald*—two admittedly non-removable actions—solely on the basis of the ambiguous Second Consolidation Order, which directly contradicted the First Consolidation Order.

Defendants could have joined plaintiffs' counsel in contacting the state court, but declined to do so. *Id.* They also could have waited mere days for the previously scheduled Case Management

1 Conference set for November 16, 2018, but likewise declined to do so. *Id.* Such reckless conduct
 2 represents a waste of court and party resources that should be countenanced.

3 Although Defendants assert otherwise (*see* Opp. at 25), the foregoing clearly demonstrates
 4 that Defendants lacked an objectively reasonable basis for removal. *Rubin v. Reinhard*, No.
 5 08CV1820-WQH-JMA, 2009 WL 862241, at *6 (S.D. Cal. Mar. 25, 2009) ("The standard for
 6 awarding fees under 28 U.S.C. §1447(c) turns on the reasonableness of the removal.") (citing *Martin*
 7 *v. Franklin Capital Corp.*, 546 U.S. 132, 141(2005); *see also* *Teuma v. Marvin Lumber & Cedar*
 8 *Corp.*, 2019 WL 118596, at *6 (N.D. Cal. Jan. 7, 2019) ("The purposes of awarding fees under
 9 §1447(c) are 'to deter removals sought for the purpose of prolonging litigation and imposing costs on
 10 the opposing party[.]'"); *Castro v. Providian Nat. Bank*, No. C-00-4256 VRW, 2000 WL 1929366, at
 11 *4 (N.D. Cal. Dec. 29, 2000) (nothing that ultimately "[t]he court has broad discretion in this
 12 determination").

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CERTIFICATE OF SERVICE

I hereby certify that on, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on January 25, 2019.

/S/ Stephen J. Oddo
STEPHEN J. ODDO